



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WING LEE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent, cleaning of the suite and garbage removal. The landlord is seeking to retain the security deposit in satisfaction of the claim.

Despite being served by registered mail sent on January 7, 2014, as confirmed by the Canada Post tracking number, the respondent did not appear and the hearing proceeded in their absence.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation under section 67 of the Act for damages or loss?

Background and Evidence

The landlord testified that the tenancy began on July 1, 2013. The rent was \$1,350.00 per month and a security deposit of \$675.00 was paid. On November 19, 2013 the tenant gave written Notice to move effective December 31, 2013.

However, according to the landlord, the tenant owed outstanding arrears for November 2013 in the amount of \$235.00 and did not pay the \$1,350.00 rent for the month of December, totaling \$1,585.00 which is being claimed.

In addition, the landlord is claiming cleaning costs of \$500.00, garbage removal costs of \$104.50 including a \$10.00 "*admin fee for invoicing*".

The landlord submitted into evidence a copy of the tenancy agreement, a copy of the tenant's notice to end tenancy, proof of service, a copy of an invoice dated November 25, 2013 for \$94.50 for garbage removal, copies of communications and photographs of the unit. No copy of the move-in/move-out condition inspection report was submitted.

The ledger shows that the tenant was billed \$60.00 for late payment fees in October and \$60.00 for late payment fees in November 2013. The landlord testified that the late fees were charged pursuant to a term in the tenancy agreement addendum.

The total monetary claim is for \$3,039.50 that includes the claims above plus \$1,350.00 rent for the month of January 2014, after the tenancy had already ended.

Analysis

Section 58 of the Act provides that, except as restricted under this Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or the use of common areas or services or facilities.

Section 6 of the Act also states that the rights, obligations and prohibitions are enforceable between a landlord and tenant under a tenancy agreement and either party has the right to make an application for dispute resolution if they cannot resolve a dispute over the terms of their tenancy agreement.

With respect to rent owed, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement. In this instance, I find that the tenant did not pay the \$1,350.00 rent when it was due for December 2013. Accordingly, I find that the landlord is entitled to \$1,350.00 rent owed for the month of December 2012.

In regard to the \$1,350.00 rent for the month of January 2014, inexplicably shown on the tenant's ledger and claimed in this application, I find that this tenancy was properly ended by the tenant in accordance with the Act effective December 31, 2013 and therefore there is no basis for this rent charge for January. Given this fact, I find that the landlord's claim for January 2014 rent must be dismissed.

In regard to the inclusion of a \$60.00 late fee for October and November 2013 rents, based on an agreed-upon term in the tenancy agreement, I find that late fees are governed by section 7(1) (d) of the *Residential Tenancy Regulation*. This section of the Act provides that a landlord can charge a fee of not more than \$25.00 for late payment of rent, or a returned cheque by a financial institution.

Section 6(3)(a) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations, and Section 5 of

the Act states that landlords or tenants may not avoid or contract out of the Act or Regulation and that any attempt to avoid or contract out of the Act or Regulations is of no force or effect.

In this instance, the Landlord has submitted a copy of the tenancy agreement into evidence showing that the parties had both agreed to that the tenant would be responsible to pay a late fee of \$60.00 as a term of the tenancy agreement. However, because the amount shown in the contract exceeds that permitted under the Act, I find that the ledger amount showing that \$235.00 was owed on November 15, 2013 would have to be adjusted to be a balance of \$115.00, because the \$120.00 late fees charged to the tenant's account must be deducted as they were imposed in violation the Act.

In regard to the landlord's claim for cleaning and disposal, it is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the tenant of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof the claimant took steps pursuant to section 7(2) of the Act minimize the loss.

In this instance, the burden of proof is on the claimant, that being the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

Section 37(2) of the Act states, upon vacating a rental unit, the tenant must leave it reasonably clean and undamaged, except for reasonable wear and tear.

I accept the landlord's testimony that they incurred a cost of \$94.50 for garbage removal. However, I reject the landlord's claim for an additional \$10.00 "*admin fee for invoicing – garbage*" as I find that the landlord's costs of administrating their rental business is not to be categorized as damages under the Act.

I find that the landlord's claim for \$500.00 for cleaning was not supported by a properly completed move-in and move-out condition inspection reports or any other evidence and must be dismissed.

Based on the evidence before me I find that the landlord is entitled to total compensation of \$1,584.50, comprised of \$115.00 in rent owed for November 2013, \$1,350.00 rent owed for December 2013, \$94.50 in and garbage removal costs and \$25.00 for a portion of the cost of the application, being that the landlord was only partially successful in the claim.. I order that the landlord retain the tenant's \$675.00 security deposit in partial satisfaction of the claim leaving \$909.50 still outstanding.

I hereby grant a monetary order in favour of the landlord in the amount of \$909.50. This order must be served on the landlord and may be enforced in small claims court if necessary

Conclusion

The landlord's application is partly successful and the landlord is granted a monetary order for rent, damages and half the cost of the application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 17, 2014

Residential Tenancy Branch

